

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

Application of SAN DIEGO GAS & ELECTRIC)	
COMPANY for approval of Servicing Agreement)	
Between State of California Department of Water)	A.01-06-039
Resources and San Diego Gas & Electric Company)	
Pursuant to Chapter 4 of the Statutes of 2001 (Assembly)	
Bill 1 of the First 2001-2002 Extraordinary Session))	
(U 902-E))	

**PETITION OF SAN DIEGO GAS & ELECTRIC COMPANY
(U 902-M) FOR MODIFICATION OF DECISION 01-09-013**

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March 29, 2002

PUBLIC UTILITIES COMMISSION
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SAN DIEGO OFFICE

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I. Introduction

Pursuant to Rule 47 of the Commission's Rules of Practice and Procedure, San Diego Gas & Electric Company ("SDG&E") hereby petitions the California Public Utilities Commission ("Commission") for modification of Decision 01-09-013, issued September 6, 2001 in the above proceeding. In that decision, the Commission approved a Servicing Agreement (the "Servicing Agreement") between SDG&E and the California Department of Water Resources ("DWR").

Following negotiations with DWR, SDG&E's original Servicing Agreement has been recently amended and restated in response to Decision 02-02-051, which approved the Rate Agreement between DWR and the Commission. As more fully described below, the changes reflected in the First Amended and Restated Servicing Agreement include:

- Unbundling DWR Charges into Power and Bond Charges.
- Adding provisions to collect Bond Charges, Exit Fees and any other applicable DWR Charge approved by the Commission from Electric Service Providers.
- Recognizing that the Bond Charge will be based on total connected load, not just net short provided by DWR.

Further changes to the Servicing Agreement were also required in order to comply with D.01-09-013 and D.02-02-052, including the elimination of dual billing and the inclusion of remittances by SDG&E to DWR for imbalance energy delivered to SDG&E's customers.

SDG&E by this Petition asks the Commission to modify D.01-09-013 to adopt the modifications to the Servicing Agreement. The First Amended and Restated Servicing Agreement is attached hereto as Attachment A. SDG&E also requests an expedited review and decision process on this Petition, as described below, in order to facilitate expeditious issuance of bonds by DWR.

II. Background

On June 22, 2001, SDG&E filed A.01-06-039, seeking Commission approval of the Servicing Agreement between ("DWR") and ("SDG&E"). This Servicing Agreement had been entered into by and between DWR and SDG&E pursuant to Chapter 4 of the Statutes of 2001, hereinafter referenced as "AB 1X-1". AB 1X-1 in Water Code Section 80106(a) provides that DWR may contract with electrical corporations (such as SDG&E) to transmit and distribute power being provided by DWR to electric consumers, and for the electrical corporations to provide billing, collection, and other related services as agent for DWR. D.01-09-013, issued September 6, 2001, approved the Servicing Agreement between DWR and SDG&E and ordered certain modifications to it. These modifications required amendments to the Servicing Agreement, including the elimination of "dual Billing" (i.e., DWR's option to send its own bills to utility customers).

Subsequently, on February 21, 2002, the Commission issued several key decisions regarding DWR. These included D.02-02-051, adopting the Rate Agreement between the Commission and DWR, and D.02-02-052, which allocated DWR's 2001-2002 revenue

requirement among the customers in the various service territories in California.¹ These decisions required modification of the adopted Servicing Agreement, because among other changes, DWR Charges were separated into Power Charges and Bond Charges. In addition, D.02-02-052 ordered each of the utilities, including SDG&E, to remit to DWR for the total amount of DWR energy delivered to their customers, including scheduled and real-time imbalance energy, for both past deliveries and on a prospective basis.

III. Basis for Modification

SDG&E respectfully requests that the Commission grant the petition under Rule 47 on the grounds that the changes requested (as reflected in the First Amended and Restated Servicing Agreement) are necessary to conform to D.01-09-013, D.02-02-051 and D.02-02-052.

In the Rate Agreement Decision (D.02-02-051), the Commission acknowledged that DWR had suggested several modifications to the Servicing Agreements. DWR requested the Commission to order the utilities, (including SDG&E), to make these modifications promptly. Thus, in D.02-02-051, the Commission encouraged SDG&E to work with DWR and submit appropriate amendments to the Commission for approval. The instant Petition provides those amendments for the Commission's consideration and adoption.

Because SDG&E must submit an amended Servicing Agreement as a result of D.02-02-051, SDG&E is taking the opportunity also to reflect in the First Amended and Restated Servicing Agreement the revisions to the original Servicing Agreement that were ordered in D.01-09-013 and the revisions required to include remittances by SDG&E to DWR for imbalance energy as ordered in D.02-02-052.

¹ On March 21, 2002, the Commission denied rehearing, after modification of these decisions, in D.02-03-062 and D.02-03-063.

SDG&E notes that it has been in discussions with DWR on an amendment to the Servicing Agreement related to DWR's Demand Bidding Program. To avoid possible confusion, SDG&E hereby informs the Commission that it may in the near future submit an amendment to the Servicing Agreement with respect to that subject. However, any such amendment can be dealt with by the Commission separately from the instant Petition and does not need to be considered on the same expedited schedule as proposed herein for this Petition.

IV. Proposed Modification

Rule 47(b) requires that the petitioner state concisely the justification for the proposed modification(s) and propose specific wording to carry out the requested modification(s). The specific changes proposed are described herein. The First Amended and Restated Servicing Agreement conforms the original Servicing Agreement with the Rate Agreement decision (D.02-02-051) in the following manner:

- The First Amended and Restated Agreement contains language changes that primarily relate to definitional changes, deletion of the dual billing option, and “unbundling” or expanding DWR Charges from a single charge to separate Bond and Power Charges.
- The First Amended and Restated Agreement does not specify how SDG&E would bill or implement such Bond Charges or costs related to such Bond Charges and does not extend past what was already approved in the Rate Agreement.
- The First Amended and Restated Servicing Agreement acknowledges the fact that the parties agree to modify the Servicing Agreement once the bond issuance has been approved and once more specific information is known. Once the bonds are

approved, the Servicing Agreement would be updated to add the specific information as to how SDG&E will bill for Bond Charges and monthly reports.

The justification for the proposed modification is SDG&E's compliance with the direction given in D.02-02-051 to unbundled the DWR Charges and make the other changes proposed herein. Having completed negotiations with DWR and having executed the First Amended and Restated Servicing Agreement, SDG&E respectfully requests that D.01-09-013 be modified as proposed herein so that DWR's bonds can be issued expeditiously. SDG&E is requesting a shortened response time for this Petition as well as an immediate effective date for the First Amended and Restated Servicing Agreement. This proposed effective date will allow DWR's financing to proceed as soon as possible.

SDG&E proposes that D.01-09-013 be modified by 1) adopting the First Amended and Restated Servicing Agreement, and 2) by making the following textual changes to D.01-09-013:

New Finding of Fact:

27. SDG&E and DWR have negotiated the First Amended and Restated Servicing Agreement in response to the direction given in Decision 02-02-051.

New Conclusion of Law:

13. SDG&E and DWR's proposed amendments to the approved Servicing Agreement are reasonable and in the public interest. Accordingly they should be adopted.

Revised Ordering Paragraph:

1. The First Amended and Restated Servicing Agreement that was executed by and between the California Department of Water Resources and San Diego Gas & Electric Company, on March 29, 2002, attached as Appendix A of this decision, is approved.

V. Service of Petition

Pursuant to Rule 47(c), this Petition has been filed and served (including electronically) on “all parties to the proceeding or proceedings in which the decision proposed to be modified was made”, i.e. all parties to A.01-06-039.² In an abundance of caution, SDG&E has also served this petition electronically on all parties to A.00-11-038, the proceeding in which the key DWR-related decisions (D.02-02-051 and D.02-02-052) were issued that necessitated some of the changes in the Servicing Agreement submitted by this Petition.

VI. Time for Processing this Petition

Rules 47 and 77.1 through 77.5(f) provide schedules for processing petitions for modification and issuing decisions in response to them. SDG&E requests that the Commission, through an ALJ or Assigned Commissioner Ruling, shorten the time for processing and issuing a decision in response to this petition for modification, to the dates described below. DWR has indicated its desire that the Commission act on this Petition at the April 22, 2002 Commission conference, in order to expedite the issuance of its bonds pursuant to AB 1X-1. Thus, an expedited schedule is justified and is in the best interests of SDG&E’s ratepayers and the residents of the State of California.

SDG&E proposes this schedule:

Petition for Modification filed: March 29, 2002

Responses to Petition due: April 5, 2002

Reply to Responses due: April 9, 2002

Proposed Decision issued: April 15, 2002

² Rule 47(d) requires that, if more than one year has passed since the effective date of the decision for which modification is sought, the party requesting modification must explain why the petition could not have been presented within one year of the effective date. In the instant case, the Amended Servicing Agreement requires modification of D.01-09-013, which was issued less than one year ago.

Comments on Proposed Decision due: April 18, 2002

(No Reply Comments Allowed)

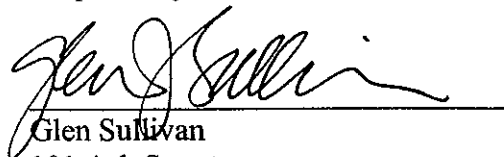
Decision issued: April 22, 2002

SDG&E understands that as a result of D.02-02-051, Southern California Edison Company ("SCE") may also request the Commission to approve an amendment to SCE's Servicing Agreement with DWR. SDG&E requests that this petition and any such request by SCE be processed on the same schedule.

VII. Conclusion

SDG&E and DWR have negotiated amendments to the original Servicing Agreement to comply with D.01-09-013 and D.02-02-052 and consistent with D.02-02-051. Accordingly, SDG&E requests modification of D.01-09-013 to adopt the First Amended and Restated Servicing Agreement, effective immediately upon approval by the Commission.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Glen Sullivan", is written over a horizontal line.

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Attorney for
San Diego Gas & Electric Company

March 29, 2002

ATTACHMENT A –
FIRST AMENDED AND RESTATED SERVICING AGREEMENT
Between
STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES
AND
SAN DIEGO GAS & ELECTRIC COMPANY

FIRST AMENDED AND RESTATED SERVICING AGREEMENT

Between

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

And

SAN DIEGO GAS & ELECTRIC COMPANY

THIS AGREEMENT HAS BEEN FILED WITH AND APPROVED BY THE CALIFORNIA PUBLIC UTILITIES COMMISSION ("COMMISSION") FOR USE BETWEEN THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES ("DWR") AND SAN DIEGO GAS & ELECTRIC COMPANY ("UTILITY").

Execution Date: _____

Date of Commission Approval: _____

Effective Date: _____

SERVICING AGREEMENT

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ATTACHMENTS

<u>Attachment</u>	<u>Title</u>
SA1	Service Attachment 1 – Consolidated Utility Billing Services
A	Representatives and Contacts
B	Remittance Methodology
C	Sample Daily and Monthly Reports
D	General Terms and Conditions
E	Additional Provisions
F	Calculation Methodology for Reduced Remittances Pursuant to 20/20 Program
G	Fee Schedule
H	Adjustments to DWR Charges for Variances in DWR Power Delivered

FIRST AMENDED AND RESTATED SERVICING AGREEMENT

THIS FIRST AMENDED AND RESTATED SERVICING AGREEMENT (the "Agreement") is entered into by and between the State of California Department of Water Resources ("DWR"), separate and apart from its powers and responsibilities with respect to the State Water Resources Development System, and San Diego Gas & Electric Company, a California corporation ("Utility"). DWR and Utility are sometimes collectively referred to as the "Parties" and individually referred to as a "Party."

RECITALS

- A. Under the Act, DWR is authorized to sell electric power and energy to Customers. Amounts payable by DWR under this Agreement are payable solely from the Department of Water Resources Electric Power Fund established pursuant to Section 80200 of the California Water Code or other appropriated amounts legally available therefor.
- B. Utility is engaged in, among other things, the transmission and distribution of electrical services to customers in its service territory, the billing and collection for electrical services and other charges, and the ownership, installation and reading of electrical meters for such customers.
- C. The Act and Applicable Commission Orders allow DWR and the Utility to enter into contracts under which the Utility provides for the transmission and distribution of all power sold or made available for sale by DWR to Customers, and provides billing, collection and related services, as agent for DWR, on terms and conditions that reasonably compensate Utility for its services.
- D. On June 22, 2001, the Parties entered into a Servicing Agreement to set forth the terms under which Utility will provide for the transmission and distribution of DWR Power as well as billing and related services.
- E. On September 6, 2001, the Commission approved the Agreement pursuant to Decision 01-09-013, and ordered certain amendments to the Servicing Agreement as described in Ordering Paragraphs 3, 4 and 5 of such decision.
- F. On February 21, 2002, the Commission issued Decision 02-02-051, approving and adopting a Rate Agreement between the Commission and the Department.
- G. The Parties desire to amend the Agreement to comply with Commission Decision 01-09-013 and to implement certain provisions of the Rate Agreement.

NOW, THEREFORE, in consideration of the mutual obligations of the Parties, the Parties agree as follows:

Section 1. Definitions.

The following terms, when used herein (and in the attachments hereto) with initial capitalization, shall have the meaning specified in this Section 1. Certain additional terms are defined in the attachments hereto. The singular shall include the plural and the masculine shall include the feminine and neuter, and *vice versa*. "Includes" or "including" shall mean "including without limitation." References to a section or attachment shall mean a section or attachment of this Agreement, as the case may be, unless the context requires otherwise, and reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented or restated through the date as of which such reference is made (except as otherwise specifically provided herein). Unless the context otherwise requires, references to Applicable Laws or Applicable Tariffs shall be deemed references to such laws or tariffs as they may be amended, replaced or restated from time to time. References to the time of day shall be deemed references to such time as measured by prevailing Pacific time.

- 1.1. **ACH** – Automated Clearing House, a nationwide payment and collection system which provides for the electronic distribution and settlement of funds.
- 1.2. **Act**– Chapter 4 of Statutes of 2001 (Assembly Bill 1 of the First 2001-02 Extraordinary Session) of the State of California.
- 1.3. **Additional Charges** – Additional Charges shall have the meaning set forth in Section 7.2 below.
- 1.3.5. **Aggregate Power** –DWR Power, Utility-Provided Electric Power, and, subject to Section 4.3 of the Rate Agreement, ESP Power or other third party provided power for Customers located within the Utility's service territory, to the extent DWR Charges are authorized to be imposed on any such power by Applicable Commission Orders.
- 1.4. **Agreement** – This Servicing Agreement, including all attachments hereto.
- 1.5. **Applicable Commission Orders** –Such rules, regulations, decisions, opinions or orders as the Commission may lawfully issue or promulgate from time to time, which further define the rights and obligations of the Parties under this Agreement.
- 1.6. **Applicable Law** –The Act, Applicable Commission Orders and any other applicable statute, constitutional provision, rule, regulation, ordinance, order, decision or code of a Governmental Authority.
- 1.7. **Applicable Tariffs** – Utility's tariffs, including all rules, rates, schedules and preliminary statements, governing electric energy service to Customers in Utility's service territory, as filed with and approved by the Commission and, if applicable, the Federal Energy Regulatory Commission.

- 1.8. **Assign(s)** – Assign(s) shall have the meaning set forth in Section 14.3(c).
- 1.9. **Billing Services** – means Consolidated Utility Billing Service
- 1.9.3 **Bond Charges** – Bond Charges shall have the meaning set forth in the Rate Agreement.
- 1.9.7 **Bundled Customer** – A Customer that purchases electric energy from Utility.
- 1.10. **Bureau** – Bureau shall have the meaning set forth in Section 8.2(b).
- 1.11. **Business Days** – Regular Monday through Friday weekdays which are customary working days, excluding holidays, as established by Applicable Tariffs.
- 1.12. **Business Hours** – The period on a Business Day from 9:00 a.m. until 5:00 p.m.
- 1.13. **C.E.R.S.** – California Energy Resource Scheduling, a division of DWR.
- 1.14. **Charges** – DWR Charges and Utility Charges.
- 1.15. **Claims** – Claims shall have the meaning set forth in Section 12.
- 1.16. **Commission** – The California Public Utilities Commission.
- 1.17. **Confidential Information** – Confidential Information shall have the meaning set forth in Section 6.1(c).
- 1.18. **Consolidated Utility Billing Service** – Billing service through the use of Consolidated Utility Bills as described in Service Attachment 1 to this Agreement.
- 1.19. **Consolidated Utility Bill** – A consolidated bill prepared and presented by Utility to a Customer which includes both the Customer's Utility Charges and DWR Charges.
- 1.20. **Customer** – A customer in Utility's service area that purchases (or is deemed to purchase) Aggregate Power.
- 1.21. **Daily Remittance Amount** – Daily Remittance Amount shall have the meaning set forth in Section 4.2(a).
- 1.22. **Daily Remittance Report** – Daily Remittance Report shall have the meaning set forth in Section 4.2(b).
- 1.23. **Day-Ahead Market** – The daily ISO forward market for which energy and ancillary services are scheduled for delivery on the following calendar day.
- 1.24. **Delinquent Payment** – Delinquent Payment shall mean the payment of any amount due under this Agreement after the time when payment is required to be made hereunder, as further described and/or limited hereunder.

- 1.25. **Discloser** – Discloser shall have the meaning set forth in Section 6.1(c).
- 1.26. Reserved.
- 1.27. Reserved.
- 1.28. **DWR Charges** – Bond Charges, Power Charges and any other amounts authorized to be collected from Customers pursuant to Applicable Commission Orders and Applicable Law in order to meet DWR’s revenue requirements under the Act, as calculated pursuant to this Agreement and Applicable Law.
- 1.29. **DWR Power** – The electric power and energy, including but not limited to capacity and output, or any of them supplied by DWR to Bundled Customers pursuant to the Act and Applicable Commission Orders.
- 1.30. **DWR Revenues** – Those amounts required to be remitted to DWR by Utility pursuant to Applicable Law.
- 1.31. **DWR’s Agent** – DWR’s Agent shall have the meaning set forth in Section 8.2(b).
- 1.32. **Effective Date** – The date this Agreement is effective in accordance with Section 14.16, as such date is set forth on the cover page hereof.
- 1.32.3 **Electric Service Provider** – Electric Service Provider has the meaning set forth in the Rate Agreement.
- 1.32.7. **ESP Power** – electric power sold by an Electric Service Provider to Customers.
- 1.33. **Event of Default** – Event of Default shall have the meaning set forth in Section 5.2.
- 1.34. **Execution Date** – The date this Agreement is fully executed by the Parties, as such date is set forth on the cover page hereof.
- 1.34.5 **Exit Fee** -- Any fee that DWR is entitled, under Applicable Law, to assess and collect from a Customer in the event such Customer ceases purchasing DWR Power.
- 1.35. **Final Hour-Ahead Schedule** – The final schedule of DWR Power submitted by DWR and Utility and published by the ISO for the Hour-Ahead Market.
- 1.36. **Fund** – Fund shall have the meaning set forth in Section 13.2.
- 1.37. **Governmental Authority** – Any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to a government, including the Commission.

- 1.38. **Governmental Program** - Any program or directive established by Applicable Law which directly or indirectly affects the rights or obligations of the Parties under this Agreement and which obligates or authorizes DWR to make payments or give credits to Customers or other third parties under such programs or directives.
- 1.39. **Hour-Ahead Market** - The ISO forward market for which energy and ancillary services are scheduled for subsequent hours for delivery on the current calendar day.
- 1.40. **Imbalance Energy** - The difference between electric power metered and the electric power scheduled in the Day-Ahead Market or Hour-Ahead Market.
- 1.41. **Indemnified Party** - Indemnified Party shall have the meaning set forth in Section 12.
- 1.42. **Indemnifying Party** - Indemnifying Party shall have the meaning set forth in Section 12.
- 1.43. **Initial Remittance Date** - Initial Remittance Date shall have the meaning set forth in Section 4.2(a).
- 1.44. **Insolvency Event** - With respect to Utility, (a) the filing of a decree or order for relief by a court having jurisdiction in its premises or any substantial part of its property in an involuntary case under any applicable federal or state bankruptcy, insolvency or other similar law now or hereafter in effect, or the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for it or for any substantial part of its property, or the ordering of the winding-up or liquidation of its affairs, and such decree or order shall remain unstayed and in effect for a period of 60 consecutive calendar days; or (b) the commencement by it of a voluntary case under any applicable federal or state bankruptcy, insolvency or other similar law now or hereafter in effect, or the consent by it to the entry of an order for relief in an involuntary case under any such law, or the consent by it to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for it or for any substantial part of its property, or the making by it of any general assignment for the benefit of creditors, or the taking of action by it in furtherance of any of the foregoing.
- 1.45. **ISO** - The State of California Independent System Operator.
- 1.46. **Late Payment Rate** - The Prime Rate plus 3%.
- 1.46.5 **Power Charges** - Power Charges shall have the meaning set forth in the Rate Agreement.
- 1.47. **Prime Rate** - The rate which Morgan Guaranty Trust Company of New York announces from time to time in New York, New York as its prime lending rate, the Prime Rate to change when and as such prime lending rate changes. The Prime Rate

is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer.

- 1.47.5 Rate Agreement** – The Rate Agreement between DWR and the Commission adopted by the Commission on February 21, 2002 pursuant to Commission Decision 02-02-051, as the same may be amended and adopted by subsequent Commission proceedings.
- 1.48. Recipient** – Recipient shall have the meaning set forth in Section 6.1(c).
- 1.49. Recurring Fees** – Recurring Fees shall have the meaning set forth in Section 7.1.
- 1.50. Remittance** – A payment by Utility to DWR or its Assign(s) in accordance with this Agreement.
- 1.51. Scheduled Energy** – DWR Power set forth on schedules submitted by DWR to Utility and the ISO in the Day-Ahead Market and Hour-Ahead Market that, pursuant to Section 2.2(b), DWR will provide to Bundled Customers.
- 1.52. Scheduling Coordinator – to – Scheduling Coordinator Trade** – Schedules for energy transferred from one ISO scheduling coordinator to another. Such schedules are deemed delivered by the ISO upon publication by the ISO of the final schedules.
- 1.53. Services** – Billing Services, metering services and meter reading services which may be performed by Utility and related collection, remittance and other services provided by Utility for DWR pursuant to this Agreement.
- 1.54. State** – The State of California.
- 1.55. Set-Up Fee** – Set-Up Fee shall have the meaning set forth in Section 7.1.
- 1.56. Term** – The term of this Agreement as set forth in Section 5.1.
- 1.57. 20/20 Program** – 20/20 Program shall have the meaning set forth in Section 4.3.
- 1.58. Utility Charges** – Charges incurred by a Customer for electricity-related services and products provided by Utility to the Customer, as approved by the Commission and, as applicable, the Federal Energy Regulatory Commission or other Governmental Authority (including, but not limited to, any Competition Transition Charges or Fixed Transition Amount Charges owing to Utility or its affiliates, as those terms are defined under the California Public Utilities Code). Utility Charges shall not include DWR Charges or charges related to natural gas related services and products.
- 1.59. Utility-Provided Electric Power** – Utility-Provided Electric Power shall refer to electricity from Utility's own generation, qualifying facility contracts, other power purchase agreements and bilateral contracts. Utility-Provided Electric Power shall include neither DWR Power nor ESP Power.

The terms used in the attachments, but not specifically defined herein or elsewhere in this Agreement, are understood by the Parties to have their ordinary meanings.

Section 2. Energy Delivery and Ownership.

2.1. Delivery of DWR Power.

Pursuant to the Act and Applicable Commission Orders, Utility covenants and agrees to transmit, or provide for the transmission of, and distribute DWR Power to Bundled Customers over Utility's transmission and distribution system in accordance with Applicable Law, Applicable Tariffs and any other agreements between the Parties.

2.2. Data and Information Communications Procedures.

- (a) Utility shall estimate Bundled Customer usage and Utility-retained generation for a given trade day and shall communicate the net of such estimate to DWR by 7:00 a.m. on the preceding Business Day. In the event that DWR observes a persistent deviation between estimated Bundled Customer usage and actual Bundled Customer usage, or between estimated Utility-retained generation and actual Utility-retained generation, DWR may request Utility to review, and Utility will promptly commence to review, Utility's forecast methodology and will report the results of such review to DWR; provided, however, that Utility shall have no obligation to correct or minimize such deviation except as provided in Attachment H hereto.
- (b) DWR shall send to Utility in writing each day the Scheduling Coordinator-to-Scheduling Coordinator Trade between DWR and Utility. This information shall be delivered no later than 9:30 a.m. for trades in the Day-Ahead Market for the following day, and no later than two hours and twenty minutes prior to the start of the delivery hour for trades in the Hour-Ahead Market. Utility and DWR will separately provide these schedules to the ISO prior to the close of the respective markets. The above deadlines for DWR are set because the ISO Day-Ahead Market currently closes at 10:00 a.m. on the day before delivery and the ISO Hour-Ahead Market currently closes two hours before the delivery hour. If these closing times should change, the deadlines for submission of DWR data to Utility shall change proportionately, which revised deadlines shall be confirmed in writing by DWR and Utility. Upon Utility's request, DWR shall supply information to Utility substantiating to Utility's reasonable satisfaction (i) the total amount of energy purchased by DWR in the Day-Ahead Market and Hour-Ahead Market; and (ii) other such information that may be required for Utility to verify the DWR Charges, or any component thereof, including information regarding the allocation of such energy among Customers and other third parties to the extent so required.
- (c) The basis for remittances of revenues for Power Charges shall be the amounts collected from Bundled Customers for actual DWR Power supplied, as further

described in Attachment H. The basis for the remittance of revenues for Bond Charges shall be amounts collected from Customers pursuant to future Applicable Commission Orders implementing such Bond Charges (including, without limitation, the portion of any Exit Fee imposed by the Commission on Customers of Electric Service Providers or upon any other third party which constitutes a Bond Charge). If and when ordered by the Commission, the remaining portion of any such Exit Fee shall be remitted to the Department in a manner reasonably agreed upon by the Parties. All DWR Charges shall be at the applicable Commission-approved rates. If either Party obtains actual knowledge of a material flaw in the procedures or methods set forth in this Agreement, and such flaw has a material adverse effect on (i) the delivery of Services (including, without limitation, the timely and accurate remittance of DWR Charges to DWR), or (ii) the timely and accurate payment to Utility of compensation for Services hereunder, the discovering Party shall bring such flaw to the attention of the other Party within a reasonable time. Upon the delivery of such notice, the Parties agree to conduct good faith negotiations to resolve such flaw. Without limiting any other terms, express or implied, of this or any other agreement between the Parties, the Parties agree that the two preceding sentences do not impose an independent obligation to perform any investigation or monitoring to discover any such flaw.

- (d) Adjustments to the remittance of revenues to DWR in (c) above will be based on the following, (i) the difference between scheduled quantities and those scheduled quantities which are actually reflected in ISO settlement statements, and (ii) the difference between the Utility estimate of Customer usage and the actual Customer usage reflected in ISO settlement statements. Utility shall include an adjustment of DWR Charges, DWR Power, Utility-Provided Electric Power and, as applicable, ESP Power, on its next Consolidated Utility Bill if so provided for in Attachment H.
- (e) All data and information to be exchanged between the Parties in connection with scheduling transactions shall be in the format agreed to by Utility and DWR and shall, except as otherwise provided by this Agreement or Utility Applicable Tariffs, or as may be approved by Utility in its reasonable discretion, be submitted electronically. If a Party receives any information that is unreadable, or contains data that cannot be processed by the receiving Party's system, or is otherwise damaged, such receiving Party shall inform the sending Party of such problem. Until any such problem is corrected, the receiving Party shall not be responsible for processing information received in this condition. The foregoing notwithstanding, a receiving Party shall not be excused from its obligation to process information if the receiving Party cannot read or otherwise process the information sent by the sending Party as a result of defects, errors, bugs, or viruses in the receiving Party's systems or software or due to negligence or wrongful act(s) or failure(s) to act on the part

of the receiving Party's employees, agents, independent contractors, subcontractors or assigns.

2.3. Ownership of DWR Power, Utility-Provided Electric Power and DWR Revenues.

- (a) Notwithstanding any other provision herein, and in accordance with the Act and Section 80110 of the California Water Code, Utility and DWR agree that DWR shall retain title to all DWR Power sold by DWR to Bundled Customers. In accordance with the terms hereof, Utility is acting solely as the servicing agent for DWR with respect to the sale of Aggregate Power to Customers. In accordance with the Act and Section 80104 of the California Water Code, upon the delivery of DWR Power to Bundled Customers, those Bundled Customers shall be deemed to have purchased that power from DWR, and payment for any such sale shall be a direct obligation of such Bundled Customers to DWR. Notwithstanding any other provision herein, DWR and Utility agree that Utility shall retain title to all Utility-Provided Electric Power supplied by Utility to Bundled Customers.
- (b) DWR Charges shall be the property of DWR for all purposes.

2.4. Allocation of DWR Power.

DWR Power will be allocated pursuant to the Act and other Applicable Law and Applicable Tariffs.

Section 3. Billing Services.

3.1. Provision of Services by Utility.

- (a) Utility shall provide metering services, meter reading services and Billing Services relating to the delivery of Aggregate Power, except to the extent that such services are provided by a third party. In the event that billing services are provided by a third party to its Customers, Utility shall bill and collect DWR Charges from the third party supplier, as applicable to the third party for its Customers, on behalf of DWR, in accordance with Applicable Commission Orders and Applicable Tariffs. Utility provided metering services, meter reading services and Billing Services shall be in accordance with Applicable Commission Orders, Applicable Tariffs and Service Attachment 1 hereto.
- (b) On behalf of DWR, Utility shall (i) follow its customary standards, policies and procedures in performing its duties hereunder and (ii) perform its duties hereunder using the same degree of care and diligence that Utility exercises for its own account.

3.2. Reserved.

3.3. Modification of Billing and Metering Systems.

Utility reserves the right to modify and replace its billing and metering systems, subject to the requirements of Applicable Law, if any. However, to the extent that such modifications and replacements materially interrupt Services provided by Utility to DWR, Utility shall provide to DWR, as soon as reasonably practicable, prior written notice of any such changes, including, but not limited to, such changes as are required by Applicable Law or Applicable Commission Order(s). Moreover, to the extent any such modifications would affect the collection of DWR Charges in a manner which is different from the collection of Utility Charges, Utility shall obtain DWR's prior written consent to such modifications, which consent shall not be unreasonably withheld or delayed.

3.4. Customer Inquiries.

So long as Consolidated Utility Billing Service is in place, Utility agrees to address all Customer inquiries regarding the DWR Charges. DWR agrees to provide all necessary information to Utility in order to permit Utility to respond to all Customer inquiries on a timely basis. In extraordinary circumstances, Utility will refer Customer inquiries to DWR in a manner to be agreed upon by the Parties. In the event that either (i) DWR's failure to provide all such necessary information to Utility, (ii) DWR's provision of inaccurate information or (iii) DWR's failure to handle Customer inquiries referred to it by Utility in extraordinary circumstances in the manner agreed upon by the Parties results in Utility's non-compliance with its obligations under this Section 3.4, such non-compliance will not constitute a material breach of this Agreement and will not give DWR the right to terminate this Agreement.

Section 4. DWR Charges; Remittance of DWR Revenues.

4.1. DWR Charges.

DWR Revenues required to be remitted to DWR under this Agreement shall be based upon DWR Charges in effect from time to time pursuant to Applicable Law.

4.2. Remittance of DWR Revenues.

As provided below and in Attachment B hereto, all DWR Revenues shall be held by Utility in trust for DWR (whether or not held together with other monies) and shall be remitted to DWR.

- (a) Within one Business Day after the Effective Date, Utility shall determine the Daily Remittance Amount in the manner set forth in Attachment B hereto (the "Daily Remittance Amount"). On the day of such determination (the "Initial Remittance Date"), Utility shall remit to DWR or its Assign(s) the Daily Remittance Amount, if any, for each day from the Effective Date up to and

including the Initial Remittance Date. On each subsequent Business Day during the remainder of the Term, Utility shall determine and remit to DWR or its Assign(s) the Daily Remittance Amount for such Business Day. If the Utility determines that it has remitted amounts to DWR in error, Utility may provide notice of such event to DWR (accompanied by an explanation of the facts surrounding such erroneous deposit), and DWR shall review such notice and information as soon as practicable and promptly repay such funds if and to the extent DWR agrees with Utility, such agreement not to be unreasonably withheld or delayed.

- (b) Each Remittance shall be accompanied by a written report substantially in the form of that set forth in Attachment C hereto (the "Daily Remittance Report"). Utility will not be required at any time to advance or pay any of its own funds in the fulfillment of its responsibilities hereunder with respect to DWR Charges, except to the extent provided otherwise in the Attachments hereto.
- (c) Utility, from time to time, will make adjustments regarding amounts remitted as described in Attachment B hereto. In addition, monthly reconciliation reports, as described in Attachment C hereto, shall be filed with DWR by Utility.
- (d) Except as expressly provided in this Agreement (including the Attachments hereto), Utility shall not deduct from amounts due to DWR hereunder any amounts owing by DWR to Utility which relate to arrangements within or outside the scope of this Agreement, or any other amounts, and Utility expressly waives any right to do so. The foregoing shall not limit Utility's rights to seek any other remedies permitted under other arrangements with DWR.
- (e) The Parties recognize that prior to the Effective Date, Utility has been remitting DWR Charges to DWR based upon the interim remittance methodologies described in Decision 01-03-081, adopted by the Commission on March 27, 2001, and Decision 01-05-064, adopted by the Commission on May 15, 2001 (collectively the "Interim Remittance Methodologies"). Utility shall reconcile the amounts remitted pursuant to the Interim Remittance Methodologies at the time and in the manner set forth in Attachment B hereto.

4.3. 20/20 Program.

To the extent that the program established in the California Governor's Executive Order D-30-01, dated March 13, 2001, and Executive Order D-33-01, dated April 26, 2001, as the foregoing orders may be amended, supplemented, extended or otherwise modified (the "20/20 Program"), obligates DWR to make payments or extend credits to Bundled Customers or other third parties under such program, Remittances to DWR may be reduced by such payments to the extent of DWR's responsibility as required by Applicable Law and Applicable Tariffs. Utility's reasonable initial

implementation and recurring administrative costs associated with such program shall be paid by DWR in the same manner and at the same times as Utility's Set-Up Fee and Recurring Fees, respectively, as described in Sections 7.2 and 7.3 below. Additionally, Utility will invoice DWR for any other costs incurred by Utility under such program, and DWR shall pay such invoices as Additional Charges, in the manner contemplated in Section 7 below. The method for calculating reduced Remittances to DWR under this Section 4.3, as well as Utility's implementation and administration costs, shall be as set forth in Attachment F hereto.

Section 5. Term and Termination; Events of Default.

5.1. Term.

The term of this Agreement (the "Term") shall commence on the Effective Date and shall terminate on the earlier of (a) 180 calendar days after the last date DWR Charges are imposed on Customers, or (b) the earlier termination of this Agreement pursuant to this Section 5.

5.2. Events of Default by Utility.

The following events shall constitute "Events of Default" by Utility under this Agreement:

- (a) any failure by Utility to remit to DWR or its Assign(s) any required Remittance in the manner and at the time specified in this Agreement (except to the extent otherwise allowed under Sections 4.3 and 7.2) that continues unremedied for three Business Days after the earlier of the day Utility receives written notice thereof from DWR or the day the responsible manager at Utility first has actual knowledge of such failure; or
- (b) any failure by Utility to duly observe or perform in any material respect any other covenant or agreement of Utility set forth in this Agreement, which failure (i) materially and adversely affects the interests or rights of DWR or its Assign(s), and (ii) continues unremedied for a period of 60 calendar days after written notice of such failure has been given to Utility by DWR or its Assign(s); or
- (c) any representation or warranty made by Utility in this Agreement proves to have been incorrect when made, which has a material adverse effect on DWR or its Assign(s) and which material adverse effect continues unremedied for a period of 60 calendar days after the date on which written notice thereof has been given to Utility by DWR or its Assign(s).

5.3. Consequences of Utility Events of Default.

- (a) Upon any Event of Default by Utility, DWR may, in addition to exercising any other remedies available under this Agreement or under Applicable Law, (i) terminate this Agreement in whole or in part (including Service Attachment 1); and (ii) apply to the Commission and, if necessary, any court of competent jurisdiction for sequestration and payment to DWR or its Assign(s) of DWR Revenues. Remittances not made to DWR by Utility on the date due (except to the extent Remittances were not made by operation of Sections 4.3, 7.2, 14.4 or Attachment B hereto) shall bear interest at the Prime Rate from the first day after the due date until the third Business Day after the due date, and at the Late Payment Rate thereafter until paid.
- (b) Reserved.

5.4. Defaults by DWR.

DWR shall be in default under this Agreement upon:

- (a) subject to subsections (b), (c), (d) and (e) below, DWR's failure to cure its material breach of any provision of this Agreement within 60 calendar days after receiving written notice thereof from Utility;
- (b) Except for amounts to which DWR has objected in writing pursuant to Section 7.2, DWR's failure to pay to Utility the Set-Up Fee or Recurring Fees within three Business Days after the date they are due hereunder, as provided in Section 7;
- (c) Except for amounts to which DWR has objected in writing pursuant to Section 7.2, DWR's failure to pay to Utility the initial implementation and recurring administrative costs associated with Utility's implementation of the 20/20 Program, as provided in Section 4.3;
- (d) Except for amounts to which DWR has objected in writing pursuant to Section 7.2, DWR's failure to fulfill any other monetary obligation hereunder within 15 calendar days after receiving written notice from Utility that such obligation is past due; or
- (e) DWR's failure to fulfill its obligations under Section 2.2 within 15 calendar days after receiving written notice thereof from Utility.

Upon any default by DWR under this Section 5.4, Utility may exercise any remedies available under this Agreement or under Applicable Law, provided that Utility shall have no right to terminate this Agreement either in whole or in part (including Service Attachment 1) or any obligation hereunder. Except for amounts to which DWR has objected in writing pursuant to Section 7.2 and which are determined not to be owed,

any Set-Up Fee or Recurring Fees, or any initial implementation and recurring administrative costs associated with Utility's implementation of the 20/20 Program, as provided in Section 4.3, which are not paid to Utility on the date due shall bear interest at the Prime Rate from the first day after the due date until the third Business Day after the date they are required to be made hereunder, and at the Late Payment Rate thereafter until paid. Except for amounts to which DWR has objected in writing pursuant to Section 7.2 and which are determined not to be owed, any other monetary obligation payable to Utility by DWR shall bear interest at the Prime Rate from the date due until 15 days after receiving written notice from Utility that such amount is overdue, and thereafter at the Late Payment Rate. When and to the extent that any amounts to which DWR has objected in writing pursuant to Section 7.2 are determined to be owing, such amounts shall bear interest from the due date at the rates described above for the applicable category of obligation.

5.5. Survival of Payment Obligations.

Upon termination of this Agreement, each Party shall remain liable to the other Party for all amounts owing under this Agreement. Utility shall continue to collect and remit, pursuant to the terms of this Agreement and Attachment B hereto, any DWR Charges billed to Customers before the effective date of termination, except as provided in Attachment B.

Section 6. Confidentiality.

6.1. Proprietary Information.

- (a) Nothing in this Agreement shall affect Utility's obligations to observe any Applicable Law prohibiting the disclosure of Confidential Information regarding its Customers.
- (b) Nothing in this Agreement, and in particular nothing in Sections 6.1(e)(x) through 6.1(e)(z) of this Agreement, shall affect the rights of the Commission to obtain from Utility, pursuant to Applicable Law, information requested by the Commission, including Confidential Information provided by DWR to Utility. Applicable Law, and not this Agreement, will govern what information the Commission may disclose to third parties, subject to any confidentiality agreement between DWR and the Commission.
- (c) The Parties acknowledge that each Party may acquire information and material that is the other Party's confidential, proprietary or trade secret information. As used herein, "Confidential Information" means any and all technical, commercial, financial and customer information disclosed by one Party to the other (or obtained from one Party's inspection of the other Party's records or documents), including any patents, patent applications, copyrights, trade secrets and proprietary information, techniques, sketches, drawings, maps, reports, specifications, designs, records, data, models, inventions, know-how,

processes, apparatus, equipment, algorithms, software programs, software source documents, object code, source code, and information related to the current, future and proposed products and services of each of the Parties, and includes, without limitation, the Parties' respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, business forecasts, sales and merchandising, and marketing plans and information. In all cases, Confidential Information includes proprietary or confidential information of any third party disclosing such information to either Party in the course of such third party's business or relationship with such Party. Utility's Confidential Information also includes any and all lists of Customers, and any and all information about Customers, both individually and aggregated, including but not limited to Customers' names, street addresses of Customer residences and/or facilities, email addresses, identification numbers, Utility account numbers and passwords, payment histories, energy usage, rate schedule history, allocation of energy uses among Customer residences and/or facilities, and usage of DWR Power. All Confidential Information disclosed by the disclosing Party ("Discloser") will be considered Confidential Information by the receiving Party ("Recipient") if identified as confidential and received from Discloser.

- (d) Each Party agrees to take all steps reasonably necessary to hold in trust and confidence the other Party's Confidential Information. Without limiting the generality of the immediately preceding sentence, each Party agrees (i) to hold the other Party's Confidential Information in strict confidence, not to disclose it to third parties or to use it in any way, commercially or otherwise, other than as permitted under this Agreement; and (ii) to limit the disclosure of the Confidential Information to those of its employees, agents or directly related subcontractors with a need to know who have been advised of the confidential nature thereof and who have acknowledged their express obligation to maintain such confidentiality.
- (e) The foregoing two paragraphs will not apply to any item of Confidential Information if: (i) it has been published or is otherwise readily available to the public other than by a breach of this Agreement; (ii) it has been rightfully received by Recipient from a third party without breach of confidentiality obligations of such third party and outside the context of the provision of Services under this Agreement; (iii) it has been independently developed by Recipient personnel having no access to the Confidential Information; or (iv) it was known to Recipient prior to its first receipt from Discloser. In addition, Recipient may disclose Confidential Information if and to the extent required by law or a Governmental Authority, provided that (x) Recipient shall give Discloser a reasonable opportunity to review and object to the disclosure of such Confidential Information, (y) Discloser may seek a protective order or confidential treatment of such Confidential Information, and (z) Recipient

shall make commercially reasonable efforts to cooperate with Discloser in seeking such protective order or confidential treatment. Discloser shall pay Recipient its reasonable costs of cooperating.

6.2. No License.

Nothing contained in this Agreement shall be construed as granting to a Party a license, either express or implied, under any patent, copyright, trademark, service mark, trade dress or other intellectual property right, or to any Confidential Information now or hereafter owned, obtained, controlled by, or which is or may be licensable by, the other Party.

6.3. Survival of Provisions.

The provisions of this Section 6 shall survive the termination of this Agreement.

Section 7. Payment of Fees and Charges.

7.1. Utility Fees.

DWR will pay to Utility a fee, calculated in accordance with Attachment G hereto (the "Set-Up Fee"), in order to cover Utility's costs of establishing the procedures, systems, and mechanisms necessary to perform Services. In addition, DWR also agrees to pay to Utility an annual fee, calculated in accordance with Attachment G hereto, payable monthly in arrears as provided in Section 7.2 hereof (the "Recurring Fees") for Services rendered pursuant to Section 3.1, Section 3.4 and Service Attachment 1 to this Agreement. Additional fees to cover changes in costs or the costs of other services provided hereunder shall be as set forth in Attachment G, or if not set forth therein, shall be negotiated by the Parties. Except to the extent provided otherwise in subsequent agreements between the Parties and except to the extent otherwise provided under the 20/20 Program, if the Parties are unable to resolve any disputes relating to such additional fees, either Party may, upon giving seven calendar days advance written notice to the other, submit the dispute to the Commission for proposed resolution, in accordance with Applicable Law. Provided, however, DWR agrees to pay to Utility fees that will permit recovery of the Utility's incremental cost of establishing procedures, systems and mechanisms necessary to perform Services in connection with Bond Charges. The Utility shall file these fees with the Commission. DWR, prior to Commission action on this filing, shall pay the fees as filed. Upon final action by the Commission, such payment shall be adjusted to reflect the fees approved by the Commission, together with interest from the date of payment to the date of adjustment, at the Prime Rate. Utility acknowledges that the Commission may adjust, with notice to Utility and an opportunity for Utility to be heard, Utility's rates to avoid double recovery of any costs paid by DWR hereunder which have already been included in Utility's rates.

7.2. Payment of Utility Fees and Charges.

The Set-Up Fee shall be due and payable on the Effective Date, and DWR will pay Utility the Set-Up Fee, in the manner provided in Section 7.3 below. After receipt of Utility's invoice 30 days in advance, DWR will pay to Utility its Recurring Fees in monthly installments by the 10th day of each month in the manner provided in Section 7.3 below. Additionally, with respect to all other fees and charges which are expressly identified as owing by DWR to Utility under this Agreement (the "Additional Charges") Utility shall (in paper format or, at DWR's option, electronically) submit to DWR an invoice reflecting such Additional Charges for such calendar month. Any invoiced amount for Recurring Fees or Additional Charges shall be due and payable within three Business Days after presentation, and any invoiced amount and the Set-Up Fee shall be considered past due 30 calendar days after presentation, after which interest shall accrue as provided in Section 7.4. To the extent that any invoiced amounts described in this Section 7.2 are not fully paid within 45 days after presentation, and DWR has not objected to Utility in writing by such date, Utility shall have the right to deduct from any future Remittance(s) the unpaid and overdue amount which is not the subject of any such objection by such date, until such invoice is paid in full or until the dispute over the amount due has been resolved.

7.3. Method of Payment.

- (a) Except as otherwise expressly provided herein, any payment from either Party to the other Party under this Agreement shall be made by ACH or, if ACH is unavailable, then by wire transfer of immediately available funds to the bank account designated by the receiving Party or, if mutually agreed, paid by means of a check or warrant sent to the recipient's address indicated in accordance with Section 14.14 hereof. Where the Parties have made arrangements for a bank or other third party to remit funds from one Party to the other Party, proper identification of the bank or third party, including the account number, shall be furnished in writing. The remitting Party shall reasonably cooperate in correcting any bank or other third-party errors and shall not be relieved of its payment responsibilities because of such errors.
- (b) Except as expressly provided otherwise herein or under any Applicable Law, Utility shall be required to pay all expenses incurred by it in connection with its activities under this Agreement (including any fees to and disbursements by accountants, counsel, or any other person, any taxes, fees, surcharges or levies imposed on Utility, and any expenses incurred in connection with reports to be provided hereunder) out of the compensation paid to it pursuant to this Section 7, and Utility shall not be entitled to any extra payment or reimbursement therefor. Notwithstanding anything to the contrary above, if and to the extent any additional taxes (excluding taxes on Utility's income), fees or charges are imposed on Utility due solely to Utility's performance of

Services hereunder with respect to DWR Charges (such as franchise fees or taxes on DWR Power, the State of California electric energy surcharge, local utility user taxes, or Commission fees), to the extent these taxes, fees, or charges are not already included in Utility's rates and Utility has not been reimbursed therefor and is not authorized to seek reimbursement from Customers therefor, DWR shall reimburse Utility therefor as "Additional Charges" in accordance with Section 7.2.

7.4. Interest

Except as provided in Sections 5.3 or 5.4, any Delinquent Payment under this Agreement (whether or not a regularly scheduled payment) shall bear interest at the Late Payment Rate.

Section 8. Records; Audit Rights; Annual Certification.

8.1. Records.

Utility shall maintain accurate records and accounts relating to DWR Charges in sufficient detail to permit recordation of DWR Charges billed to Customers and DWR Revenues remitted by Utility to DWR. Utility shall provide to DWR and its Assign(s) access to such records. Access shall be afforded without charge, upon reasonable request made pursuant to Section 8.2. Access shall be afforded only during Business Hours and in such a manner so as not to interfere unreasonably with Utility's normal operations. Utility shall not treat DWR Revenues as income or assets of the Utility or any affiliate for any tax, financial reporting or regulatory purposes, and the financial books or records of Utility and affiliates shall be maintained in a manner consistent with the absolute ownership of DWR Revenues by DWR and Utility's holding of DWR Revenues in trust for DWR (whether or not held together with other monies).

8.2. Audit Rights.

- (a) Upon 30 calendar days' prior written notice, DWR may request an audit, conducted by DWR or its agents (at DWR's expense), of Utility's records and procedures, which shall be limited to records and procedures containing information bearing upon: (i) DWR Charges being billed to Customers by Utility (and Customer payments of DWR Charges); (ii) fees to Utility for Services provided by Utility pursuant to this Agreement; (iii) Utility's performance of its obligations under this Agreement; (iv) allocation of Aggregate Power that is subject to DWR Charges pursuant hereto or Applicable Law; (v) projection or calculation of DWR's revenue requirements as described in Sections 80110 and 80134 of the California Water Code from time to time; and (vi) such other matters as may be permitted by Applicable Commission Orders, Applicable Tariffs or as DWR or its Assign(s) may reasonably request. The audit shall be conducted during Business Hours

without interference with Utility's normal operations, and in compliance with Utility's security procedures.

- (b) As provided in the Act, the State of California Bureau of State Audits (the "Bureau") shall conduct a financial and performance audit of DWR's implementation of Division 27 (commencing with Section 80000) of the California Water Code, such audit to be completed prior to December 31, 2001, and the Bureau shall issue a final report on or before March 31, 2003. In addition, as provided in Section 8546.7 of the California Government Code, Utility agrees that, pursuant to this Section 8.2, DWR or the State of California Department of General Services, the Bureau, or their designated representative ("DWR's Agent") shall have the right to review and to copy (at DWR's expense) any non-confidential records and supporting documentation pertaining to the performance of this Agreement and to conduct an on-site review of any Confidential Information pursuant to Sections 8.3 and 8.8 hereof. Utility agrees to maintain such records for such possible audit for three years after final Remittance to DWR. Utility agrees to allow such auditor(s) access to such records during Business Hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Utility agrees to include a similar right for DWR or DWR's Agent to audit records and interview staff in any contract between Utility and a subcontractor related to performance of this Agreement.

8.3. Confidentiality.

Materials reviewed by either Party or its agents in the course of an audit may contain Confidential Information subject to Section 6 above. The use of all materials provided to DWR or Utility or their agents, as the case may be pursuant to this Section 8, shall comply with the provisions in Section 6 and shall be limited to use in conjunction with the conduct of the audit and preparation of a report for appropriate distribution of the results of the audit consistent with Applicable Law.

8.4. Annual Reports.

At least annually, Utility shall cause a firm of independent certified public accountants (which may provide other services to Utility) to prepare, and Utility will deliver to DWR and its Assign(s), a report addressed to Utility (which may be included as part of Utility's customary auditing activities), for the information and use of DWR, to the effect that such firm has performed certain procedures (the scope of which shall be agreed upon with DWR) in connection with Utility's compliance with its obligations under this Agreement during the preceding year, identifying the results of such procedures and including any exceptions noted. Utility will deliver a copy of each report prepared hereunder to the Commission (at the address specified in section 14.14) at the same time it delivers each such report to DWR.

8.5. Annual Certifications.

At least annually, Utility will deliver to DWR, with a copy to the Commission, a certificate of an authorized officer certifying that to the best of such officer's knowledge, after a review of Utility's performance under this Agreement, Utility has fulfilled its obligations under this Agreement in all material respects and is in compliance herewith in all material respects.

8.6. Additional Applicable Laws.

Each Party shall make an effort to promptly notify the other Party in writing to the extent such Party becomes aware of any new Applicable Laws or changes (or proposed changes) in Applicable Tariffs hereafter enacted, adopted or promulgated that may have a material adverse effect on either Party's ability to perform its duties under this Agreement. A Party's failure to so notify the other Party pursuant to this Section 8.6 will not constitute a material breach of this Agreement, and will not give rise to any right to terminate this Agreement or cause either Party to incur any liability to the other Party or any third party.

8.7. Other Information.

Upon the reasonable request of DWR or its Assign(s), Utility shall provide to the Commission and to DWR or its Assign(s) any public financial information in respect of the Utility applicable to Services provided by Utility under this Agreement, or any material information regarding the sale of DWR Power, to the extent such information is reasonably available to Utility, which (i) is reasonably necessary and permitted by Applicable Law to monitor the performance by Utility hereunder, or (ii) otherwise relates to the exercise of DWR's rights or the discharge of DWR's duties under this Agreement or any Applicable Law. In particular, but without limiting the foregoing, Utility shall provide to DWR, with a copy to the Commission, any such information that is necessary or useful to calculate DWR's revenue requirements (as described in Sections 80110 and 80134 of the California Water Code) or DWR Charges.

8.8. Customer Confidentiality.

Nothing in this Section 8 shall affect the obligation of Utility to observe any Applicable Law prohibiting disclosure of information regarding Customers, and the failure of Utility to provide access to such information as a result of such obligation shall not constitute a breach of this Section 8 or this Agreement.

Section 9. Representations and Warranties.

- (a) Each person executing this Agreement for the respective Parties expressly represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.

- (b) Each Party represents and warrants that it has the full power and authority to execute and deliver this Agreement and to perform its terms, that execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate or other action by such Party, and that this Agreement constitutes such Party's legal, valid and binding obligation, enforceable against such Party in accordance with its terms.

Section 10. Amendment Upon Changed Circumstances.

- (a) The Parties acknowledge that compliance with any Commission decision, legislative action or other governmental action (whether issued before or after the Effective Date of this Agreement) affecting the operation of this Agreement, including but not limited to (i) dissolution of the ISO, (ii) changes in the ISO market structure, (iii) a decision regarding the "Fixed Department of Water Resources Set-Aside" as such term is defined in Section 360.5 of the California Public Utilities Code, (iv) the establishment of other Governmental Programs, (v) the establishment or implementation of Bonds Charge or related changes ordered by the Commission, or (vi) the imposition of an Exit Fee or similar DWR Charge upon Customers of Electric Service Providers or upon any other third party, may require that amendment(s) be made to this Agreement. The Parties therefore agree that if either Party reasonably determines that such a decision or action would materially affect the Services to be provided hereunder or the reasonable costs thereof, then upon the issuance of such decision or the approval of such action (unless and until it is stayed), the Parties will negotiate the amendment(s) to this Agreement that is (or are) appropriate in order to effectuate the required changes in Services to be provided or the reimbursement thereof. Notwithstanding Section 5.4, if the Parties are unable to reach agreement on such amendments within 60 days after the issuance of such decision or approval of such action, either Party may, in the exercise of its sole discretion, submit the disagreement to the Commission for proposed resolution, in accordance with Applicable Law. Nothing herein shall preclude either Party from challenging the decision or action which such Party deems may adversely affect its interests in any appropriate forum of the Party's choosing.
- (b) The Parties acknowledge that this Agreement has not been reviewed by the rating agencies which are rating DWR's bonds. The Parties agree that, if the rating agencies request changes to this Agreement which the Parties reasonably determine are necessary or appropriate, the Parties will negotiate to amend this Agreement to accommodate the rating agency requests and will cooperate in obtaining any required approvals of the Commission or other entities for such amendments.
- (c) The Parties acknowledge that this Agreement shall be modified to implement the California Governor's Executive Order D-39-01, dated June 9, 2001,

concerning load curtailment programs. Therefore, the Parties agree to negotiate an amendment to this Agreement and to cooperate in obtaining any required approvals of the Commission or other entity for such amendment.

Section 11. Data Retention.

All data associated with the provision and receipt of services pursuant to this Agreement shall be maintained for the greater of (a) the retention time required by Applicable Law or Applicable Tariffs for maintaining such information, or (b) three years.

Section 12. Indemnity.

Utility and, to the extent allowed under Applicable Law, DWR (each, the "Indemnifying Party") shall defend, indemnify, and hold the other Party, together with its affiliates, and each of their respective officers, agents, employees, assigns and successors in interest (collectively, the "Indemnified Party"), harmless from and against all claims, losses, demands, actions and expenses, damages and liabilities of any nature whatsoever (collectively "Claims") with respect to the acts or omissions of the Indemnifying Party or its officers, agents, contractors and employees or with respect to Indemnifying Party's performance of its obligations under this Agreement. Notwithstanding the above, the provisions of this Section 12 shall not apply to any Claims to the extent they involve the negligence, gross negligence, recklessness, willful misconduct or breach of this Agreement by either Indemnified Party. Each Indemnified Party shall bear its own attorneys' fees and costs under this Section 12. The Indemnifying Party's obligations under this Section 12 shall survive termination of this Agreement. This Section 12 notwithstanding, DWR makes no representation that it has the express or implied legal authority to perform any obligation under this Section 12.

Section 13. Limitations on Liability.

13.1. Consequential Damages.

In no event will either Party be liable to the other Party for any indirect, special, exemplary, incidental, punitive, or consequential damages under any theory. Nothing in this Section 13.1 shall limit either Party's rights as provided in Section 12 above.

13.2. Limited Obligations of DWR and Utility.

DWR agrees that it will be liable for all amounts owing to Utility for the Services hereunder, irrespective of (a) any Customer's failure to make full and timely payments owed for DWR Charges, or (b) Utility's rights under Sections 4.3 and 7.2 to deduct certain amounts in calculating Remittances owing by Utility to DWR under Attachment B. Utility will not be required at any time to advance or pay any of its own funds in the fulfillment of its responsibilities hereunder with respect to DWR

Charges, except to the extent provided otherwise in Attachments B and H hereto. Any amounts payable by DWR under this Agreement shall be payable solely from moneys on deposit in the Department of Water Resources Electric Power Fund established pursuant to Section 80200 of the California Water Code (the "Fund"). Neither the full faith and credit nor the taxing power of the State of California are or may be pledged for any payment under this Agreement. Revenues and assets of the State Water Resources Development System are not available to make payments under this Agreement. If moneys on deposit in the Fund are insufficient to pay all amounts payable by DWR under this Agreement, or if DWR has reason to believe such funds may become insufficient to pay all amounts payable by DWR under this Agreement, DWR shall diligently pursue an increase to its revenue requirements as permitted under the Act from the appropriate Governmental Authority as soon as practicable.

Section 14. Miscellaneous.

14.1. Independent Contractor.

Utility and its agents and employees shall perform their obligations under this Agreement as independent contractors and not as officers or employees of the State of California. Notwithstanding the above, Utility shall act as the agent of DWR in billing and collecting DWR Charges hereunder, as provided in the Act and Section 80106 of the California Water Code.

14.2. Remedies Cumulative.

Except as otherwise provided in this Agreement, all rights of termination, cancellation, or other remedies in this Agreement are cumulative. Use of any remedy shall not preclude any other remedy available under this Agreement.

14.3. Assignment.

- (a) Except as provided in paragraphs (b), (c) and (d) below, neither Party shall assign or otherwise dispose of this Agreement, its right, title or interest herein or any part hereof to any entity, without the prior written consent of the other Party. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee. When duly assigned in accordance with this Section 14.3(a) and when accepted by the assignee, this Agreement shall be binding upon and shall inure to the benefit of the assignee. Any assignment in violation of this Section 14.3(a) shall be void.
- (b) Notwithstanding the provisions of this Section 14.3, Utility may delegate its duties under this Agreement to an agent or subcontractor, provided that Utility shall remain fully responsible for performance of any delegated duties and shall provide DWR with 30 calendar days' prior written notice of any such

delegation, and further provided that such delegation does not, in the sole discretion of DWR, materially adversely affect DWR's or its Assigns' interests hereunder.

- (c) Utility acknowledges and agrees that DWR may assign or pledge its rights to receive performance (including payment of Remittances) hereunder to a trustee or another party ("Assign(s)") in order to secure DWR's obligations under its bonds (as that term is defined in the Act), and any such Assign shall be a third party beneficiary of this Agreement; provided, however, that this authority to assign or pledge rights to receive performance hereunder shall in no event extend to any person or entity that sells power or other goods or services to DWR. Notwithstanding the immediately preceding sentence, DWR may assign or pledge its rights to receive Remittances hereunder to another party in order to secure DWR's other obligations under the Act.
- (d) Any person (i) into which Utility may be merged or consolidated, (ii) which may result from any merger or consolidation to which Utility shall be a party or (iii) which may succeed to the properties and assets of Utility substantially as a whole, which person in any of the foregoing cases executes an agreement of assumption to perform every obligation of the Utility hereunder, shall be the successor to Utility under this Agreement without further act on the part of any of the Parties to this Agreement; provided, however, that Utility shall have delivered to DWR and its Assign(s) an opinion of counsel reasonably acceptable to DWR stating that such consolidation, merger or succession and such agreement of assumption complies with this Section 14.3(d) and that all of Utility's obligations hereunder have been validly assumed and are binding on any such successor or assign.
- (e) Notwithstanding anything to the contrary herein, DWR's rights and obligations hereunder shall be transferred, without any action or consent of either Party hereto, to any entity created by the State legislature which is required under Applicable Law to assume the rights and obligations of DWR under Division 27 of the California Water Code.

14.4. Force Majeure.

Neither Party shall be liable for any delay or failure in performance of any part of this Agreement (including the obligation to remit money at the times specified herein) from any cause beyond its reasonable control, including but not limited to, unusually severe weather, flood, fire, lightning, epidemic, quarantine restriction, war, sabotage, act of a public enemy, earthquake, insurrection, riot, civil disturbance, strike, restraint by court order or Government Authority, or any combination of these causes, which by the exercise of due diligence and foresight such Party could not reasonably have been expected to avoid and which by the exercise of due diligence is unable to overcome. An Insolvency Event shall not constitute *force majeure*. Notwithstanding

anything to the contrary above, each Party's obligation to pay money hereunder shall continue to the extent such Party is able to make such payment, and any amounts owed by Utility hereunder and received by Utility shall be held in trust for DWR (whether or not held together with other monies) and remitted to DWR as soon as reasonably practicable. Any amounts paid or remitted pursuant to this Section 14.4 shall not bear interest which would otherwise accrue under Section 7.

14.5. Severability.

In the event that any one or more of the provisions of this Agreement shall for any reason be held to be unenforceable in any respect under Applicable Law, such unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such unenforceable provision or provisions had never been contained herein.

14.6. Third-Party Beneficiaries.

The provisions of this Agreement are exclusively for the benefit of the Parties and any permitted assignee of either Party.

14.7. Governing Law.

This Agreement shall be interpreted, governed and construed under the laws of the State of California as if executed and performed wholly within the State of California.

14.8. Multiple Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be an original.

14.9. Section Headings.

Section and paragraph headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

14.10. Entire Agreement; Applicable Law.

- (a) This Agreement, including all attachments and agreements contemplated herein, contains the entire agreement and understanding between the Parties as to the subject matter of this Agreement, and merges and supersedes all prior oral or written agreements, commitments, representations and discussions between the Parties or made to third parties regarding the subject matter of this Agreement, except that this Agreement and the Parties' obligations hereunder shall be subject in all cases to the provisions of Applicable Law, and except that this Agreement shall have no effect on the terms of any agreement between DWR and Utility, as modified from time to time after the Execution Date hereof, referenced in Attachment E hereto. Furthermore, no default

under any such other agreement between the Parties shall constitute a default hereunder, and each party hereby waives any right to set off any amounts owing to it under any such other agreement against any amounts owing hereunder.

- (b) Should a conflict exist between the provisions contained in this Agreement (including the attachments hereto) and either Applicable Law or the 20/20 Program, the provisions of Applicable Law or the 20/20 Program, as the case may be, shall govern. The General Terms and Conditions contained in Attachment D are hereby incorporated by reference. In the event of a conflict between the provisions of this Agreement and any attachment hereto (including Service Attachment 1), then the provisions of the attachment shall govern. Nothing in this subsection (b) shall relieve the Parties from complying with their obligations under Section 10 to make amendments to this Agreement to reflect changed circumstances.

14.11. Amendments.

No amendment, modification, or supplement to this Agreement shall be effective unless it is in writing and signed by the authorized representatives of both Parties and approved as required, and by reference incorporates this Agreement and identifies the specific portions that are amended, modified, or supplemented or indicates that the material is new. No oral understanding or agreement not incorporated in this Agreement is binding on either of the Parties.

14.12. Waivers.

None of the provisions of this Agreement shall be considered waived by either Party unless the Party against whom such waiver is claimed gives such waiver in writing. The failure of either Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect. Waiver by either Party of any default by the other Party shall not be deemed a waiver of any other default.

14.13. Construction.

This Agreement and the provisions contained herein shall not be construed or interpreted for or against any Party because that Party drafted or caused its legal representative to draft any of such provisions.

14.14. Notices and Demands.

- (a) Except as otherwise provided under this Agreement, all notices, demands, or requests pertaining to this Agreement shall be in writing and shall be deemed

to have been given (i) on the date delivered in person, (ii) on the date when sent by facsimile (with receipt confirmed by telephone by the intended recipient or his or her authorized representative) or electronic transmission (with receipt confirmed telephonically or electronically by the intended recipient or his or her authorized representative) or by special messenger, or (iii) 72 hours following delivery to a United States post office when sent by certified or registered United States mail postage prepaid, and addressed as set forth below:

Utility: San Diego Gas & Electric Company
Customer Service Solutions
8335 Century Park Court, CP11E
San Diego, California 92123

Attn: Dawn Osborne
Direct Access Strategy & Policy Manager
Telephone: (858) 654-1275
Facsimile: (858) 654-1256
Email: dosborne@sdge.com

DWR: State of California
The Resources Agency
Department of Water Resources
California Energy Resources Scheduling Division
3310 El Camino Avenue, Suite 120
Sacramento, California 95821

Attn: Peter S. Garriss
Deputy Director
Telephone: (916) 574-2733
Facsimile: (916) 574-0301
Email: pgarris@water.ca.gov

- (b) Each Party shall be entitled to specify as its proper address any other address in the United States, or specify any change to the above information, upon written notice to the other Party complying with this Section 14.14.
- (c) Each Party shall designate on Attachment A the person(s) to be contacted with respect to specific operational matters. Each Party shall be entitled to specify any change to such person(s) upon written notice to the other Party complying with this Section 14.14.
- (d) Copies of documents required by this Agreement to be delivered to the Commission shall be delivered in accordance with this Section 14.14 and shall be addressed as set forth below: